

§§ 1940.337–1940.349

the Federal and Agriculture Procurement Regulations contained in chapters 1 and 4 of title 48 of the Code of Federal Regulations.

(b) The contractor will be selected by FmHA or its successor agency under Public Law 103–354 in consultation with any cooperating agencies. In order to avoid any conflict of interest, contractors competing for the work will be required to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

(c) The Administrator will provide the State Director with a proposed scope of work for use in securing such professional services.

(d) Applicants will not be required to pay the costs of these professional services.

§§ 1940.337–1940.349 [Reserved]

§ 1940.350 Office of Management and Budget (OMB) control number.

The collection of information requirements in this regulation has been approved by the Office of Management and Budget and has been assigned OMB control number 0575–0094.

EXHIBIT A TO SUBPART G OF PART 1940— DEPARTMENTAL REGULATION

Number: 9500–3.

Subject: Land Use Policy.

Date: March 22, 1983.

OPI: Land Use Staff, Soil Conservation Service.

SECTION

1. Purpose
2. Cancellation
3. Policy
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1. PURPOSE

The Nation's farmlands, forest lands, rangelands, flood plains, and wetlands are unique natural resources providing food, fiber, wood, and water necessary for the continued welfare of the people of the United States and protection from floods. Each year, large amounts of these lands are converted to other uses. Continued conversion of the Nation's farmlands, forest lands, and rangelands may impair the ability of the United States to produce sufficient food, fiber, and wood to meet domestic needs and

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the demands of export markets. Continued conversion of the Nation's wetlands may reduce the availability of adequate supplies of suitable-quality water, indigenous wildlife species, and the productive capacity of the Nation's fisheries. Continued encroachments on flood plains decrease the natural flood-control capacity of these land areas, create needs for expensive manmade flood-control measures and disaster-relief activities, and endanger both lives and property.

Land use allocation decisions are matters of concern to USDA. Decisions concerning land use arise from needs to accommodate needed growth and development; prevent unwarranted and costly sprawl; avoid unwarranted conversion of farm, range, and forest lands and wetlands from existing uses and unwarranted encroachment on flood plains; maintain and enhance agricultural and forest production capabilities; maintain wildlife, fish, and seafood habitat; provide or improve community services and facilities; assure appropriate environmental quality; and assure adequate supplies of suitable-quality water. These needs are highly interdependent and often compete with each other for the limited supply of available land and water.

It is Departmental policy to promote land use objectives responsive to current and long-term economic, social, and environmental needs. This policy recognizes the rights and responsibilities of State and local governments for regulating the uses of land under their jurisdiction. It also reflects the Department's responsibility to (a) assure that the United States retains a farm, range, and forest land base sufficient to produce adequate supplies, at reasonable production costs of high-quality food, fiber, wood, and other agricultural products that may be needed; (b) assist individual landholders and State and local governments in defining and meeting needs for growth and development in such ways that the most productive farm, range, and forest lands are protected from unwarranted conversion to other uses; and (c) assure appropriate levels of environmental quality.

In accordance with the authority contained in 7 U.S.C. 1010 and 7 U.S.C. 2204 and consistent with 7 CFR 2.19(f) and provisions of the Farmland Protection Policy Act, Subtitle I, Title XV, Pub. L. 97–98, the Department sets forth this statement of policy on land use.

2. CANCELLATIONS

This regulation supersedes Secretary's Memorandum 9500–2 dated March 10, 1982.

3. POLICY

Federal agencies, in implementing programs, make decisions that affect current

and potential uses of land. The Department will:

a. Promote and support planning procedures that allow landholders, interest groups, and State and local governments to have input at all appropriate stages of the decisionmaking process for public projects, programs, or activities; that recognize the rights and responsibilities of landholders in making private land use decisions; and that recognize the responsibility of governments in influencing how land may be used to meet public needs.

b. Assure that programs of the agencies within the Department discourage the unwarranted conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, and prime rangelands, as defined in appendix A; the unwarranted alteration of wetlands or flood plains; or the unwarranted expansion of the peripheral boundaries of existing settlements.

c. Manage both its land use-related programs and USDA-administered land in such manner as to (1) demonstrate leadership in meeting short- and long-term needs for growth and development, while assuring adequate supplies of needed food, fiber, and forest products; (2) assure appropriate levels of environmental quality and adequate supplies of water; and (3) discourage unwarranted expansion of peripheral boundaries of existing settlements. Whenever practicable, management of USDA-administered lands shall be coordinated with the management of adjacent private and other public lands.

d. Conduct multidisciplinary land use research and education programs responsive to identified State, local, and national needs and, when requested, assist State and local governments, citizens groups, and individual landholders in determining alternative land use values, thereby enabling local officials to make judicious choices to meet growth and development needs and to protect the community's farm- and forest-related economic base.

e. Assist landowners and State and Federal agencies in the reclamation of abandoned surface-mined lands. This reclamation will help eliminate safety, health, and environmental problems.

f. Assist in planning for the extraction of coal and other nonrenewable resources in such manner as to facilitate restoration. This restoration would reestablish or enhance food, fiber, or forest productivity or contribute to other beneficial uses of the land as mining is completed in defined areas as sites.

g. Advocate among Federal agencies:

(1) The retention of important farmlands, rangelands, forest lands, and wetlands, whenever proposed conversions to other uses (a) are caused or encouraged by actions or programs of a Federal agency or (b) require licensing or approval by a Federal agency, un-

less other needs clearly override the benefits derived from retention of such lands; and

(2) Actions that reduce the risk of flood loss and soil erosion; that minimize impacts of floods on human safety, health, and welfare; that preserve natural flood-control and other beneficial functions and values of wetlands and flood plains; and that reduce future need for expensive manmade flood-control systems, disaster-relief assistance, or Federal rehabilitation assistance in the event of flooding.

4. ABBREVIATIONS

USDA—U.S. Department of Agriculture.

NRE—Natural Resources and Environment Committee.

5. DEFINITIONS

Complete definitions for the terms *farmlands*, *forest lands*, *rangelands*, *wetlands*, and *flood plains* are found in appendix A.

6. RESPONSIBILITIES

a. The Office of the Secretary is responsible for (1) encouraging, assisting, and coordinating efforts of other Federal departments and agencies to implement policies and procedures supportive of the objectives of this regulation; (2) resolving issues and acting on recommendations raised to the Secretary's Policy and Coordination Council by the Departmental committees; and (3) raising unresolved issues and recommending actions to the appropriate Cabinet Council.

b. The NRE Committee, created under the Secretary's memorandum dated July 22, 1981, will provide departmentwide leadership for the implementation of this policy statement. In implementing this policy, the NRE Committee will:

(1) Recommend Departmental guidelines to the Secretary and schedule reviews of each agency's procedures for implementation;

(2) Monitor implementation of this policy;

(3) Encourage, support, and provide guidance to State- and local-level USDA committees in implementing this policy;

(4) Coordinate the work of USDA agencies in carrying out the provisions of this regulation; and

(5) Advise the Secretary annually as to progress and problems encountered.

c. Each USDA agency will review and make the necessary administrative changes in existing and proposed rules, regulations, guides, practices, or policies and propose needed legislative changes to bring agency programs into compliance with the provisions of this regulation.

d. Each USDA agency having programs that will be affected by this regulation shall develop implementing procedures, consistent with the guidelines provided by the NRE Committee, and shall provide to all offices of the agency copies of this policy statement,

Departmental guidelines, and agency procedures to implement this policy.

e. USDA agencies will encourage State and local governments and individual landholders to retain important farmlands, rangelands, forest lands, and wetlands and to avoid encroachments on flood plains when practicable alternatives exist to meet developmental needs. Appropriate agencies will assist State and local governments, citizens groups, and individual landholders in identifying options and determining alternative land use values as the basis for making judicious choices in meeting growth and development needs.

f. USDA agencies will encourage other Federal, State, and local government agencies to exchange information on plans or projects that may impact on important farmlands, rangelands, forest lands, wetlands, or flood plains and to involve appropriate USDA agencies early in the planning process. USDA agencies will participate in a timely manner at appropriate stages in the planning process on Federal or federally assisted projects or activities when requested. Where opportunity for such participation is not forthcoming, the Department may intercede, consistent with policy contained in this regulation, at appropriate stages in the decisionmaking process through review and comments on plans, as provided for in authorized administrative review procedures for such projects, activities, or actions.

g. When land held either in public or private ownership will be directly affected by USDA actions, the implementing agency will notify the affected landholders at the earliest time practicable of the proposed action and provide such landholders an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it.

h. Agencies of USDA will assure that their actions, investments, and programs on non-Federal lands will conform, to the extent practicable, with the uses permitted under land use regulations adopted by State or local governments.

i. When land use regulations or decisions are inconsistent with USDA policies and procedures for the protection of important farmlands, rangelands, forest lands, wetlands, or flood plains, USDA agencies shall not assist in actions that would convert these lands to other uses or encroach upon flood plains, unless (1) there is a demonstrated, significant need for the project, program, or facility, and (2) there are no practicable alternative actions or sites that would avoid the conversion of these lands or, if conversion is unavoidable, reduce the number of acres to be converted or encroached upon directly and indirectly.

7. APPENDIX A—DEFINITIONS

The following definitions apply to this Departmental Regulation.

1. IMPORTANT FARMLANDS¹

a. Prime Farmlands¹

(1) *General Criteria.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to produce, economically, sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0- to 7-percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0- to 5-percent slopes.

(2) *Specific Criteria.* Prime farmlands must meet all the following criteria. Terms used in this section are defined in these USDA publications: "Soil Taxonomy, Agriculture Handbook 436," "Soil Survey Manual, Agriculture Handbook 18," "Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282," "Wind Erosion Forces in the United States and Their Use in Predicting Soil Loss, Agriculture Handbook 346," and "Saline and Alkali Soils, Agriculture Handbook 60."

(a) The soils have:

1. Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches, or in the root zone (root zone is the part of the soil that is penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include but are not limited to grain, forage, fiber, oilseed, sugar beets, sugarcane, vegetables, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

2. Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is

¹ 17 CFR 657.5.

available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or

3. Acidic or torric moisture regimes, and the area has a developed irrigation water supply that is dependable and of adequate quality; and

(b) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches, have a mean annual temperature higher than 32 degrees Fahrenheit. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 degrees Fahrenheit; in soils that have no O horizon, the mean summer temperature is higher than 59 degrees Fahrenheit; and

(c) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep; and

(d) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown; and

(e) The soils can be managed so that in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 4 mmhoc/cm and the exchangeable sodium percentage is less than 15; and

(f) The soils are not flooded frequently during the growing season (less often than once in 2 years); and

(g) The product of K (erodibility factor) times the percent slope is less than 2.0, and the product of I (soils erodibility) times C (climatic factor) does not exceed 60; and

(h) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches, and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees Fahrenheit or higher; and

(i) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

b. Unique Farmland¹

(1) *General Criteria.* Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to produce, economically, sustained high-quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

¹See footnote 1 on previous page.

(2) *Specific Characteristics.* Unique farmland is used for a specific high-value food or fiber crop. It has a moisture supply that is adequate for the specific crop; the supply is from stored moisture, precipitation, or a developed irrigation system. It combines favorable factors of soil quality, growing season, temperature, humidity, air drainage, elevation, aspect, or other conditions, such as nearness to market, that favor the growth of a specific food or fiber crop.

c. Additional Farmland of Statewide Importance¹

This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.

d. Additional Farmland of Local Importance¹

In some local areas, there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned.

2. PRIME FOREST LANDS²

Because of the multiple use of forested lands, several categories, e.g., timber, wildlife, and recreation, may be developed. For purposes of this regulation only, the following timberland definitions will apply.

a. Prime Timberland²

Prime timberland is land that has soil capable of growing wood at the rate of 85 cubic feet or more/acre/year (at culmination of mean annual increment) in natural stands and is not in urban or built-up land uses or water. Generally speaking, this is land currently in forest, but does not exclude qualifying lands that could realistically be returned to forest. Delineation of these lands will be in accordance with national criteria.

²Prime Forest Land Definition and Criteria, U.S. Forest Service, May 26, 1977.

b. Unique Timberland²

Unique timberlands are lands that do not qualify as prime timberland on the basis of producing less than 85 cubic feet/acre/year, but are growing sustained yields of specific high-value species or species capable of producing specialized wood products under a silvicultural system that maintains soil productivity and protects water quality. Delineation of these lands will be in accordance with national criteria.

c. Timberland of Statewide Importance²

This is land, in addition to prime and unique timberlands, that is of statewide importance for the growing of wood. Criteria for defining and delineating these lands are to be determined by State forestry planning committees or appropriate State organizations.

d. Timberlands of Local Importance²

In some local areas, there is concern for certain additional forest lands for the growing of wood, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by a local agency or agencies concerned.

3. WETLANDS³

Wetlands are those areas that are inundated by surface or ground water with a frequency sufficient to support and, under normal circumstances, do or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mudflats, and natural ponds.

4. FLOOD PLAINS³

The term *flood plain* means the lowland and relatively flat areas adjoining inland and coastal waters, including floodprone areas of offshore islands, including, at a minimum, those that are subject to a 1-percent or greater chance of flooding in any given year.

5. PRIME RANGELAND⁴

Prime rangeland is rangeland which, because of its soil, climate, topography, vegetation, and location, has the highest quality or value for grazing animals. The (potential) natural vegetation is palatable, nutritious, and available to the kinds of herbivores common to the area.

³Definitions contained in Executive Orders 11988 and 11990.

⁴USDA proposed definition for intradepartmental use only.

EXHIBIT B TO SUBPART G OF PART 1940—
DEVELOPMENT AND IMPLEMENTATION
OF NATURAL RESOURCE MANAGEMENT GUIDE

1. The State Director shall complete the natural resource management guide within 12 months from the effective date of this subpart and issue the guide as a State supplement after prior approval by the Administrator. A summary of the basic content, purposes, and uses of the guide is contained in §1940.305 of this subpart. The guide shall be prepared in draft form and be provided for review and comment to USDA agencies, appropriate Federal and State agencies, State and regional review agencies assigned the consultation requirements of Executive Order 12372, as well as interested localities, groups, and citizens. Also at least one public information meeting shall be held on the draft which shall be followed by a 30-day period for the submission of public comments. Public notification of this meeting shall be made in the same manner as the notification process for a scoping meeting. (See §1940.320(c) of this subpart). Additionally, the public shall be informed that copies of the draft guide will be made available from the State Office upon request. After completion of this public review, the draft will be revised as necessary in light of the comments received and provided as a final draft State Supplement to the Administrator for review and approval. Any concerns and comments of the Administrator will be addressed by the State Director and the guide completed. Upon the Administrator's approval and the fulfillment of the requirements of paragraph 4. of this exhibit, the natural resource management guide shall then become part of any program investment strategies developed by the State Director for the purpose of addressing the rural needs of the State. Although a 12-month period has been established for the completion of a natural resource management guide, this deadline is not to be construed as curtailing or postponing the implementation of existing environmental laws, regulations, Executive orders or the Departmental Regulation 9500-3, Land Use Policy, with respect to individual project reviews, nor giving anyone any rights or claims with respect to the completion or content of the guide.

2. The natural resource management guide needs to be developed in full recognition of its role as an internal Agency planning tool and with sensitivity to the Agency's mission.

3. After the Administrator approves the natural resource management guide, it will become effective 4 months from that date. This interim period shall be used to inform local, State, and Federal agencies, localities, organizations, and interested citizens of the content of the guide. In this manner, those